IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

MACA.No. 320 of 2003

AGAINST THE ORDER DATED 16/09/2002 IN
OPMV.358/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
.....

APPELLANT/PETITIONER:

JOLLY, S/O. POULOSE,
VEMBLIYATH, ANGAMALY.

BY ADV. SRI.JOSE THETTAYIL

RESPONDENTS: RESPONDENTS:
---

1. MRS.MARY THOMAS,
AREECKAL HOUSE, BEHIND LITTLE FLOWER HOSPITAL,
ANGAMALY-683 572.

2. POULOSE T.T.,
THOTTUNGAL HOUSE, KALADY ROAD, ANGAMALY-683 572.

3. THE ORIENTAL INSURANCE CO. LTD.,
CHALAKUDY-680 307.

BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.9.2007, THE COURT ON 28/09/2007 PASSED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

MACA.NO. 320 OF 20O3

Dated this the 28th day of September, 2007

JUDGMENT

Koshy, J.

The appellant-petitioner sustained serious injuries in a motor accident. He claimed compensation of Rs.1,71,500/- contending that the accident occurred due to the negligence of the second respondent driver of the lorry. The lorry was owned by the first respondent and insured with the third respondent. Even though coverage of insurance, liability of the Insurance Company and negligence of the second respondent were accepted by the Tribunal, compensation awarded by the Tribunal was only Rs.94,400/-. Only the quantum of compensation is disputed in the appeal.

As per Exhibit A11 wound certificate, his injuries are as follows:

"1) Fracture maxilla.
2) Fracture head of humerus
3) Fracture zygoma
4) Fracture right finger
5) Fracture right orbit.
6) Fracture middle phalanx right middle finger, multiple lacerations abrasions and contusions. "

Exhibit A7 is the discharge certificate which shows that apart from the above injuries, there was injury to his right knee also. This shows that after his discharge he developed septic arthritis knee right

during hospital stay. Further, 'K' wire was also removed. Therefore, he has to undergo treatment subsequently also. Thereafter, Exhibit A17 disability certificate was issued on 23.11.2001 from the Medical Trust Hospital wherein he was treated. Exhibit A17 certificate reads as follows:

> "This is to certify that Mr.V.P.Jolly, 32, Vembliyath House, P.O. Angamaly was admitted on 27.7.94 as I.P. No.457762 in Medical Trust Hospital, Ernakulam, for
>
> 1. laceration rt knee and rt had 2.# P1 of rt midfinger 3.# maxilla and zygoma and rt orbit 4. headsplitting fracture rt humerus and managed conservatively. He developed septic arthritis knee rt during the period. He was discharged on 23.10.94. He was admitted again on 22.11.94 and discharged on 3.12.94 for K wire removal as per records produced.
>
> Now on clinical and radiological examinatin he is having
>
> 1. malunited fracture of rt humerus head and neck with limitation of abductin of 30 deg., flexion 30 deg external rotaion 30 deg with loss of strength of rt upper limb and weakness Grade IV of rt Deltoid with wasting and ugly look of shoulder.
>
> 2. malunitedfracture of PI of rt midfinger with weakness of rt hand grip strength
>
> 3. limitation of flexion of rt knee of last 20 deg due to partial anklylosis
>
> 4. asymmetry of face with ugly look to face dut to fracture to facial bones with loss of wrinkling of rt side of foreshad due to supraorbital nerve neurolysis due to trauma.

> Functionally he is having difficulty to 1. move his rt shoulder, to lift of carry or hold above head, to support, to pull or push or throw. 2. To grip strongly with his rt hand. 3. To squat or sit cross legged or to run or jump.
>
> He is assessed to have a permanent disability of 32% (thrity two) for whole body he being a sales representative at the time of accident."

2. It is pertinent to note that earlier Orthopaedic Surgeon assessed disability as 45% to the upper limb. It is the case of the petitioner that because of the fracture to maxilla as well as headsplitting fracture humerus , there is disfiguration also. That is also evident from the disability certificate. The Tribunal has taken only 15% as the disability. The Tribunal also did not consider the disability aspect mentioned in the certificate. Considering all these factors and the serious disabilities, we are of the view that compensation for atleast 25% disability ought to have been granted. He has produced Exhibit A10 salary certificate to show that at the time of accident, he was getting monthly salary of Rs.3,950/- and he was employed as a Sales Executive in the Oriental Marketing Services, Alappuzha. But the employer was not examined to prove the certificate. In the petition his claim for monthly income was Rs.2,200/-. It is submitted that future prospects also ought to be considered. He is a graduate. The accident occurred in 1994.

3. In the above circumstances, we are of the opinion that atleast Rs.2,000/- ought to have been taken as the monthly income for the purpose of calculation of compensation. He was aged 25. The Tribunal has taken 18 as the multiplier. Even though it was argued that considering the present lifespan, a higher multiplier should be taken, we find no reason to change the multiplier taken by the Tribunal as Tribunal fixed the same taking guidelines from second schedule. If that be so, compensation for disability of disfiguration and loss of earning capacity will be:

$$2000 \times 12 \times \frac{20}{100} \times 18 = 86,400$$

Therefore, additional compensation payable is Rs.37,800/-. The Tribunal found that because of the accident, he was under treatment for continuously six months and awarded six months' wages (Rs.9000) as the loss of earnings. Taking petitioner's income as Rs.1500/- per month, we have fixed Rs.2,000/- as the monthly income and the petitioner is entitled to additional amount of Rs.3,000/-. The Tribunal has awarded only Rs.5,000/- for pain and suffering. We are of the view that considering the fracture of midfinger, fracture of maxilla, fracture of zygoma right orbit, fracture of upper limbs etc., we are of the opinion that atleast Rs.10,000/- ought to have been granted for pain and suffering. Therefore,

additional compensation payable for pain and suffering will be Rs.5,000/-. Even though it was contended that all what is awarded are very meagre sum, we are not enhancing compensation on any other heads. The total additional compensation amount will be Rs.45,800/-. The above amount should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till the deposit. The accident was in 1994, since the petitioner is a graduate and he is able to manage his affairs, on deposit of the additional amount, it should be disbursed to the petitioner.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

MACA.NO. 320 OF 2003

JUDGMENT

28.9.2007